

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET 01-AFC-7C	
DATE	MAY 30 2008
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In the Matter of:

Amendment to the Application for Certification of
the Russell City Energy Center Project

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) Docket No. 01-AFC-7C
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**PETITION FOR EXTENSION OF DEADLINE FOR COMMENCEMENT OF
CONSTRUCTION FOR THE RUSSELL CITY ENERGY CENTER**

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) Docket No. 01-AFC-7C
Amendment to the Application for Certification of)
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**PETITION FOR EXTENSION OF DEADLINE FOR COMMENCEMENT OF
CONSTRUCTION FOR THE RUSSELL CITY ENERGY CENTER**

1. Pursuant to Section 1720.3 of the California Energy Commission's Rules of Practice and Procedure Russell City Energy Company, LLC ('Project Owner') requests a two year extension of the deadline for the commencement of construction of the Russell City Energy Center ('RCEC' or the 'RCEC Project'). The Commission Decision for the RCEC Project was adopted on September 11, 2002, with an initial deadline for commencement of construction of September 10, 2007. By an order dated August 29, 2007, the Commission extended the deadline for commencement of construction to September 10, 2008. The Project Owner requests a further extension of the deadline for commencement of construction for the RCEC Project to September 10, 2010.

2. Due to circumstances outside the control of the Project Owner, the Project Owner will not be able to commence construction by September 10, 2008. Prior to commencing construction, the following three steps must be completed: (1) The Environmental Appeals Board ('EAB') of the U.S. Environmental Protection Agency must issue a final decision regarding a pending appeal of the RCEC Project; (2) The EAB decision must become final and nonappealable; and (3) The Project Owner must complete the financing of the RCEC Project. It is unlikely that these steps will be completed by September 10, 2008. The Project Owner anticipates commencement of construction as soon as all three steps are completed.

3. The Commission issued a decision approving Amendment #1 on October 3, 2007. While the Project Owner had hoped to commence construction in the first quarter of 2008, a number of groups and individuals have engaged in litigation in four separate forums:

(1) Following approval of Amendment #1, three groups filed Petitions for Reconsideration of the Commission's decision. The Commission denied these Petitions for Reconsideration on November 7, 2007. The Decision denying these Petitions was posted on December 13, 2007.

(2) Concurrently with the filing of the Petitions for Reconsideration, three groups filed Petitions for Writ of Mandate with the California Supreme Court. The Court summarily denied these Petitions on January 3, 2008.

(3) In December 2007, Rob Simpson, a local resident representing himself, filed an Appeal of the RCEC Project's Authority to Construct with the Hearing Board of the Bay Area Air Quality Management District. The Hearing Board dismissed the appeal on March 20, 2008.

(4) On January 2, 2008, Mr. Simpson also filed an Appeal of the RCEC Project's PSD Permit with the Environmental Appeals Board ('EAB') of the Environmental Protection Agency. That Appeal is still pending before the EAB. It is not known when a final decision will be issued on the EAB Appeal. However, the Clean Air Act provides that the Project Owner cannot commence with construction of the RCEC Project until that EAB Appeal is final.

As a result of the multiple appeals to the Commission, the Supreme Court, the BAAQMD and the EAB, the Project Owner has been prevented from completing financing and commencing construction for a period of more than seven months from the October 3, 2007 decision approving Amendment #1. Construction will be further delayed until the EAB Appeal has been finally resolved.

4. Even when the EAB Appeal is denied, Mr. Simpson has stated on his website (announcing his candidacy for Hayward City Council) that he intends to litigate against the RCEC Project in Federal Court. Therefore, the threat of further vexatious litigation may continue to delay completion of financing and commencement of construction of the RCEC Project.

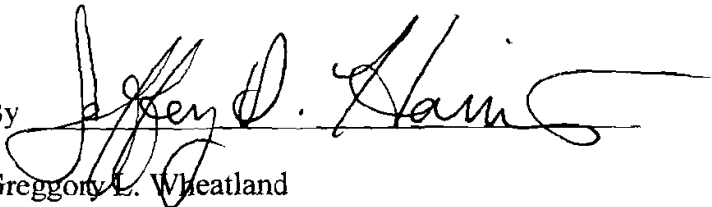
5. Extension of the deadline for commencement of construction to September 10, 2010 is in the public interest because it will allow time to resolve pending litigation and will, thereafter allow the RCEC Project to be completed and to provide a vital new source of clean, reliable electricity in the region.

6. Therefore, for good cause shown, the Project Owner requests that the Commission extend the deadline for commencement of construction of the RCEC Project to September 10, 2010.

May 30, 2008

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By 

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